

No. 03-20-00294-CV and No. 03-21-00053-CV

In the Court of Appeals for the
Third District of Texas at Austin

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
4/16/2021 4:09:33 PM
JEFFREY D. KYLE
Clerk

Mary Louise Serafine,
Appellant/Cross-Appellee

v.

Alexander Blunt, et al.
Appellees/Cross-Appellants

Mary Louise Serafine,
Appellant

v.

Karin Crump, Presiding Judge, et al.,
Appellees

**From the 250th Judicial District
Court of Travis County, Texas,
Hon. Lora J. Livingston, presiding,
Cause No. D-1-GN-12-001270**

**From the 345th Judicial District
Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601**

Request for “Certification” of Disqualifications/Recusals

TO THE HONORABLE THIRD COURT OF APPEALS:

Appellant Mary Louise Serafine wishes to ask the Court to provide a “certification” of its recent disqualifications or recusals. The purpose of the request is to comply with the requirement of Article V, Section 11 of the Texas Constitution, and Government Code Section 22.217, under which Appellant wishes to seek the alternative relief of asking the Governor to commission persons “learned in the law” to participate in deciding the appeal. The Governor has such obligation where there are at least two disqualifications,¹ as here. Tex. Const., art.

¹ In relevant part, the Texas Constitution at Article V, Section 11 provides:

V, §11; Govt. Code §22.217.

We do not find a definition of “certification,” but we believe the Governor requires such certification from the justices themselves, or perhaps the Court or Clerk of Court. We respectfully direct this request to the Honorable Jeffrey D. Kyle. There is no other requirement of the Court; for example it is not required

No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge....
When...the Court of Appeals, or any member of...[that] court[] shall be thus disqualified to hear and determine any case or cases in said court, **the same shall be certified to the Governor of the State**, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes.

Tex. Const., art. V, §11 (emphasis added).

Government Code section 22.217 provides:

Sec. 22.217. DISQUALIFICATION.

(a) The fact that at least two members of a court of appeals are disqualified to determine a case in the court **shall be certified to the governor**.

(b) The governor immediately shall commission the requisite number of persons who are learned in the law to try and determine the case.

Govt. Code §22.217 (emphasis added).

The “discrepancy between ‘at least two’ disqualifications” in the Government Code and “any” disqualification in the constitution has been resolved in favor of the constitution. *Boynton Lumber Co. v. Houston Oil Co. of Texas*, 189 S.W. 749, 761 (Tex. Civ. App. Beaumont 1916), writ dismissed w.o.j., (May 16, 1917).

that the Court render an opinion on the matter to the Governor.

Prayer

Appellant respectfully asks the Court to provide a certification of its recent disqualifications or recusals. The justices' decisions were reflected in the decision letters attached hereto for the Court's convenience.

Respectfully submitted,

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that this document was filed in the Third Court of Appeals on April 16, 2021, in both cases captioned above, No. 03-20-294-CV and No. 03-21-53-CV. It was also served on those below via the court's electronic filing system.

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the Hon. Bob Pemberton, and the Hon. David Puryear

/s/ Mary Lou Serafine

Mary Louise Serafine

State Bar No. 24048301



COURT OF APPEALS

THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547

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March 11, 2021

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RE: Court of Appeals Number: 03-20-00294-CV
Trial Court Case Number: D-1-GN-12-001270

Style: Appellant, Mary Louise Serafine// Cross-Appellants, Alexander and Ashley Blunt v. Appellees, Alexander and Ashley Blunt; Scott Lockhart; Austin Drainage and Foundation; Austin Drainage and Foundation LLC d/b/a Austin Drainage and Landscape Development; Viking Fence Company, Ltd., d/b/a/ Viking Fence Co. Viking GP, LLC; Salvador Chavarria, an Individual; Jennifer Chavarria, an Individual; and James Clanin, an Individual// Cross Appellees, Mary Louise Serafine

Dear Counsel:

On the date noted above, Appellant's Verified Motion for Disqualification or Recusal was granted in part. Pursuant to Texas Rule of Appellate Procedure 16.3, the motion to recuse was considered. Chief Justice Darlene Byrne and Justice Gisela Triana have recused themselves. The motion to recuse Justices Melissa Goodwin and Thomas Baker is denied. The motion to disqualify was considered as to the remaining four justices on this Court, and the motion to disqualify them is denied.

Very truly yours,

JEFFREY D. KYLE, CLERK

BY: *E. Talerico*

Liz Talerico, Deputy Clerk



COURT OF APPEALS

THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547

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MELISSA GOODWIN, JUSTICE
THOMAS J. BAKER, JUSTICE
GISELA D. TRIANA, JUSTICE
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March 11, 2021

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RE: Court of Appeals Number: 03-21-00053-CV
Trial Court Case Number: D-1-GN-19-002601

Style: Mary Louise Serafine
v. The Honorable Karin Crump, The Honorable Bob Pemberton, The Honorable
Melissa Goodwin, and The Honorable David Puryear

Dear Counsel:

On the date noted above, Appellant's Verified Motion for Disqualification or Recusal was granted in part. Pursuant to Texas Rule of Appellate Procedure 16.3, the motion to recuse was considered. Chief Justice Darlene Byrne, Justice Melissa Goodwin, and Justice Gisela Triana have recused themselves. The motion to recuse Justice Thomas Baker is denied. The motion to disqualify was considered as to the remaining three justices on this Court, and the motion to disqualify them is denied.

Very truly yours,

JEFFREY D. KYLE, CLERK

BY: E. Talerico

Liz Talerico, Deputy Clerk

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